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SUPREME COURT, U. S.

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No. 73-730

In the Supreme Court of the United States

OCTOBER TERM, 1973

PETER SABATINO, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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Petitioner contends that 18 U.S.C. 1014, which proscribes, *inter alia,* the making of false statements on any loan application for the purpose of influencing a federally insured bank, cannot "constitutionally" be held to apply to an application for a loan to purchase an automobile (Pet. 2).

After a jury trial in the United States District Court for the Southern District of New York, petitioner was convicted of making false statements on a loan application, in violation of 18 U.S.C. 1014 and 2. Petitioner was sentenced to four months' imprisonment and fined $2,500. The court of appeals affirmed (Pet. 19).

The evidence showed that in April 1971, in connection with an automobile purchase, petitioner answered certain questions required for the completion of a loan application while the salesman recorded the answers on the form. The application was captioned "Bankers Trust Company Buyers Credit Statement" and was signed by petitioner after his answers were recorded (T. 25, 27-28; Government Exhibit 1).[1] Petitioner told the salesman he was employed as the manager of the Haven Restaurant (T. 25); that he had been employed there for four years (T. 26); and that no judgments had ever been filed against him (T. 28). After the bank credit officer checked petitioner's IRS W-2 form, which was on file with the automobile dealer, he approved the loan (T. 51-52, 64-65).

The owner of the restaurant, which was at the same location but had changed its name in 1968, testified that she had never employed petitioner, nor paid him any money, nor authorized the issuance of a W-2 form in petitioner's name (T. 74-75). Records of the Internal Revenue Service revealed that the identification number on the particular W-2 form in question had not been assigned by IRS to any employer and that there was no record of filing in the Brooklyn IRS office under that identification number for the Haven Restaurant (T. 84). The government also introduced certified copies of two default judgments which had been entered against petitioner prior to the time he signed the application (T. 86, 90). The defense offered no evidence.

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[1] "T." refers to the trial transcript. Bankers Trust Company is insured by the Federal Deposit Insurance Corporation (T. 65).

Petitioner contends that Section 1014 applies only to applications for loans in connection with purchases of homes or to farm loans and does not apply to automobile loans. Section 1014 states, in relevant part: "Whoever knowingly makes any false statement * * * for the purpose of influencing in any way the action of * * * any bank the deposits of which are insured by the Federal Deposit Insurance Corporation * * * upon any application * * * or loan * * * [shall be fined or imprisoned, or both]."

Although Section 1014 is by its terms clearly applicable here, petitioner claims that the plain language of the statute must be disregarded and that, barring such a limiting construction, Section 1014 is unconstitutional because it fails to give "reasonable notice that the activity complained of is criminal" (Pet. 16).[2] These arguments are fully answered in the opinion of the court of appeals, on which we rely in urging that the petition for certiorari be denied.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

FEBRUARY 1974.

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[2] Contrary to petitioner's suggestion that "there has never been a reported prosecution regarding a car loan" (Pet. 14, 15-16), this Court recently denied certiorari in a case involving the application of Section 1014 to automobile loans. *United States* v. *Trexler*, 474 F. 2d 369 (C.A. 5), certiorari denied, 412 U.S. 929.

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